

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
)	

PETITION FOR LIMITED WAIVER

AccessLine Communications Corporation (“ACC”), pursuant to section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, hereby submits this Petition for Limited Waiver of Section 9.5(b) of the Commission’s Rules, 47 C.F.R. § 9.5(b), specifically requesting until October 31, 2006 to complete the deployment of E911 service to its Voice over Internet Protocol (“VoIP”) customers.

I. INTRODUCTION AND SUMMARY

ACC is a provider of interconnected VoIP services to business customers. The services are provided through an existing PBX, or equivalent¹, owned and configured by the customer, using standard telephone handsets. ACC offers retail services directly to business customers and wholesale services to resellers, who also serve only business customers. The telephone handsets cannot be operated outside of the enterprise to provide a nomadic service.

ACC has worked diligently to comply with the Commission’s E911 deadline. Even prior to the release of the VoIP 911 Order, ACC planned to support E911 as part of its interconnected VoIP services. In 2004, ACC began investigating the various options available

¹ ACC has recently introduced a new offering where it installs a gateway at a customer location that does not have a PBX and uses analog phones. The gateway connects to the standard analog phone wiring at the location. An individual phone cannot be taken off the customer’s premise and used elsewhere to provide a nomadic service.

from third parties for providing E911 services on a nationwide basis. By late 2004, ACC chose the “V911” service offered by Intrado, a recognized leader in the provision of E911 services. In December 2004, ACC signed an agreement with Intrado for the V911 service, making ACC one of the first VoIP providers to acquire this new capability. During the period from January through June of 2005, AccessLine worked diligently with Intrado to integrate the V911 technology into ACC’s network infrastructure, utilizing a significant portion of ACC’s engineering development resources; the integration was successfully completed in July 2005. In parallel, Intrado was working to interconnect its V911 service with the various Selective Routers throughout the nation, and to acquire agreements with PSAPs and other third parties as necessary to support E911 as part of the V911 service.

Through Intrado, ACC is currently capable of offering E911 service in certain markets. Intrado does not at this point, however, have a VoIP E911 solution that is available for all of ACC’s existing and future customers.² Accordingly, for reasons beyond ACC’s control and despite its good faith efforts, ACC is unable to comply fully with Section 9.5(b) of the Commission’s Rules.

In setting a 120-day deadline for VoIP E911 compliance, the Commission recognized that it was establishing an “aggressively short amount of time in which to comply.”³ Similarly, in the wireless E911 context (where carriers had years rather than months to comply), the Commission noted that “smaller carriers may face extraordinary circumstances in meeting

² See ACC’s Compliance Report, filed November 28, 2005 (“November Compliance Report”).

³ *IP-Enabled Services. E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Red 10245, 10266 ¶ 37 (2005) (subsequent history omitted) (“*VoIP E911 Order*”).

one or more of the deadlines for Phase II deployment.”⁴ The Commission has also recognized in that context that E911 waivers are appropriate where, as here, a provider “bases its request for relief on delays that were beyond its control” and submits with its waiver request “specific evidence substantiating the claim, such as documentation of the carrier’s good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission’s benchmark.”⁵

Consistent with the applicable Commission waiver standards, the public interest would be served by granting ACC a limited waiver in these circumstances to allow Intrado additional time to complete implementation of an E911 solution for ACC’s existing and new customers.

II. ACC’s GOOD FAITH COMPLIANCE EFFORTS WITH RESPECT TO THE VOIP E911 ORDER

From the outset of its service offering, ACC has been dedicated to the safety interests of its customers. It has worked diligently to comply with the Commission’s VoIP E911 rules and has engaged in significant compliance efforts.

A. Obtaining a Customer’s Registered Location.

ACC collects the Registered Location information (*i.e.*, the physical location where the service is being used as reported by the customer) from customers prior to activating the service. ACC advises its customers as part of the sign-up process, among other things (see Exhibit 1), of the importance of updating their Registered Location, cautioning them to update their Registered Location in the event the business (specifically, the customer’s phones and PBX) are moved. (As previously noted, ACC offers service only to businesses, whose phones cannot be operated

⁴ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, 20 FCC Rcd 7709, 7714 ¶ 9 (2005) (“*E911 Tier III Waiver Order*”).

⁵ *Id.* At 7715 ¶ 10 (citation omitted).

outside of the business environment. Individual phones within the business are therefore not nomadic).

ACC did not make an initial filing with the Commission because ACC did not have any interconnected VoIP customers as of the relevant dates in the VoIP 911 Order and related public notices, and, as such, the initial customer notification, acknowledgement, and Registered Location confirmation process for existing customers was not relevant. However, for all new customers, ACC has obtained Registered Location information from 100 percent of its subscribers, in compliance with section 9.5(d)(1) of the Rules.

Subscribers are also required to notify ACC if they move from their Registered Location. In the case of an ACC subscriber, that would mean the relocation of the customer's PBX (individual phones will not work unless they are operated through the PBX). Subscribers may notify ACC of any PBX relocation by contacting ACC customer service by (i) phone, (ii) e-mail, or (iii) in writing.

Option (i) permits customers to use the same equipment they use to access their interconnected VoIP service to change their Registered Location, in compliance with section 9.5(d)(2) of the Commission's Rules.

As documented in ACC's November 28, 2005 Compliance Report, ACC has complied with the Customer Notification requirements of section 9.5(e)(1), and the subscriber notification/acknowledgment and labeling requirements of section 9.5(e)(2) and 9.5(e)(3) of the Rules. In addition, ACC has filed the compliance report required by section 9.5(f) of the Rules.

B. Provision of E911 Service.

As noted above, ACC has contracted with Intrado to provide an end-to-end E911 solution compliant with section 9.5(b) of the Commission's Rules. This solution consists of an interface that allows ACC to submit the Registered Location, which Intrado verifies and geo-codes.

Intrado then provides the information that allows for an automatic display of the customer's telephone number ("ANI") and the address/location of the VoIP telephone ("ALI") to the public safety answering point ("PSAP") in the event of a 911 call.⁶

Based on information provided by Intrado, as of November 28, 2005, ACC was not able to provide E911 service in compliance with the rules established in the *VoIP E911 Order* to any of ACC's customers based on the Registered Locations provided by the customers. Intrado has delivered written assurances that it is working on providing ACC with a nationwide VoIP E911 service in accordance with the VoIP E911 Order, and has advised ACC that the initial PSAP deployments of Intrado are targeted in major metropolitan areas, consistent with ACC's subscriber base priorities.

However, ACC is limited by Intrado's roll-out of the E911 solution. Although Intrado continues to develop its nationwide E911 solution, it is not currently able to transmit all 911 callers' ANI and Registered Location to all PSAPs that are capable of receiving and processing this information.⁷

Based on information provided by Intrado,⁸ ACC believes it will require until approximately October 31, 2006, for it to be compliant with the VoIP E911 rules in substantially all of the areas in which ACC operates.

III. A LIMITED WAIVER IS IN THE PUBLIC INTEREST AND CONSISTENT WITH COMMISSION PRECEDENT

⁶ See ACC's November Compliance Report (detailing Intrado's E911 solution as applied to ACC)

⁷ See VoIP Deployment Plan attached to ACC's November Compliance Report (detailing the status of Intrado's progress with each PSAP as of November 21, 2005)

⁸ See Major Market Deployment Map attached to ACC's November Compliance Report (Intrado's planned roll-out schedule)

Section I.3 of the Commission's Rules, 47 C.F.R. § 1.3, establishes that the Commission may grant relief from its rules for good cause shown. The Commission generally finds good cause where the particular facts presented make strict compliance inconsistent with the public interest and where relief would not undermine the policy objective of the rule in question.⁹ A petitioner must demonstrate that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.¹⁰

For years, the Commission has confronted numerous requests for waiver of its E911 rules in the analogous wireless context and, as recently as April 2005, recognized that "smaller carriers may face extraordinary circumstances in meeting one or more of the deadlines" set forth in the E911 rules.¹¹ The Commission offered specific guidance on the types of factual showings that would provide sufficient support for a waiver request. In particular, "to the extent a carrier bases its request for relief on delays that were beyond its control," the Commission emphasized that "it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks."¹²

ACC is a small VoIP provider with only a small number of customers, but it has worked diligently to meet the Commission's "aggressive" timetable and has engaged in good faith efforts to comply with the VoIP E911 rules. Nonetheless, for reasons beyond ACC's control and

⁹ See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir.), *cert denied*, 409 U.S. 1027 (1972) ("*WAIT Radio*"); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

¹⁰ See *WAIT Radio*, 418 F.2d at 1159.

¹¹ *Tier III Waiver Order*, 20 FCC Rcd at 7714 ¶ 9.

¹² *Id.* At 7715 ¶ 10 (citations omitted). Similarly, in considering waiver requests in numerous other contexts, the Commission has traditionally afforded carriers relief where, as here, their compliance with a particular regulation is dependent on the availability of equipment from third-party vendors. See, e.g., *Policies and Rules Concerning Operator Service Providers*, CC Docket No. 90-313, Notice of Proposed Rulemaking, 5 FCC Rcd 4630, 4633 ¶ 22 (1990); *Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability, Phase II*, 13 FCC Rcd 9564, 9568 ¶ 18, 9570 ¶ 25 (CCB 1998); *Roosevelt County Rural Tel. Coop., Inc.*, 13 FCC Rcd 22, 41-46 ¶¶ 28-36 (CCB 1997).

despite its good faith efforts, ACC is unable fully to comply with section 9.5(b) of the Commission's rules, 47 C.F.R. § 9.5(b). It therefore seeks the instant waiver until October 31, 2006 for new customers and, to the extent necessary,¹³ for existing customers.

In support of this request, ACC offers the following:

- ACC does not have the resources to create and deploy its own dedicated E911 solution in a timely manner;
- ACC researched third-party vendors to provide an E911 solution in compliance with the requirements of the *VoIP E911 Order* and after thoughtful consideration, contracted with Intrado, a recognized leader in the E911 field to provide an end-to-end E911 solution;
- Under the Intrado solution, Intrado takes the steps necessary to verify the Registered Location information provided by ACC, geo-code it and, in the event of a 911 call, transmit the ANI and ALI to the PSAP, which satisfies the requirements of the VoIP E911 Order;
- Intrado has stated that it can route information to 154 E911 Selective Routers as of November 28, 2005.
- Intrado's ongoing efforts to achieve a nationwide solution are constrained by a variety of circumstances, some of which are beyond its control.¹⁴
- ACC relies upon Intrado for the E911 solution and is limited by Intrado's roll-out of the product

Despite ACC's success in obtaining Registered Location information from 100 percent of its subscribers and its good faith efforts to work with outside sources to meet the Commission's

¹³ The Enforcement Bureau has indicated that providers that have not achieved full compliance are not required to discontinue service to existing customers. *Enforcement Bureau Outlines Requirements of November 28, 2005 Interconnected Voice Over Internet Protocol 911 Compliance Letters*, Public Notice, DA 05-2945 (EB rel. Nov. 7, 2005)

¹⁴ ACC notes that a further impediment to compliance is the fact that full deployment of Intrado's solution, in turn, depends on additional parties, including Local Exchange Carriers, PSAPs, and the cooperation of certain states/territories. On December 2, 2005, ACC received a letter from Intrado indicating that governmental entities in the following states are imposing additional testing requirements; Arizona, Connecticut, Delaware, Maine, Massachusetts, Tennessee, and Vermont, which will further delay product roll-out. In addition, with respect to nomadic VoIP services, Intrado needs pseudo-ANIs and, without an interim Routing Number Authority, Intrado cannot access p-ANI nationwide. The effect of this is to force Intrado to try and obtain such information on an individual case basis, thus showing the roll-out of the E911 solution for nomadic subscribers

requirements, circumstances beyond its control prevent the company from complying with the November 28 deadline. A waiver is thus warranted.

Further, given the circumstances here, grant of ACC's waiver request is in the public interest. ACC has a long-standing, strong and continuing commitment to public safety. For example, ACC contracted with Intrado to provide an E911 service in December 2004, six months prior to the VoIP 911 Order, and has obtained Registered Location information from 100 percent of its subscribers.

Moreover, ACC has a specific path to compliance. Intrado's success, though measured, demonstrates that the solution can and does work in accordance with the VoIP E911 Order. Intrado has assured ACC that it is working on nationwide deployment and, based on discussions with Intrado, ACC believes it needs until October 31, 2006 to comply with the VoIP E911 rules in substantially all areas in which ACC operates. During this time, customers in areas where Intrado does not yet support E911 capability will continue to have access to an Intrado-supplied 911 service ("ECS"), which enables the customer to reach emergency personnel through an administrative line at the appropriate PSAP. In addition, ACC has performed the development necessary to integrate a new "Level of Service" tool recently made available by Intrado, which allows ACC to positively confirm whether a given customer's address is within Intrado's E911 coverage area. This capability allows ACC to advise customers of the level of 911 service available at their Registered Location.

In the meantime, strict compliance with the rule would be inconsistent with the public interest. ACC is a privately-held company that relies only upon the revenues from its customer base and funding from its investors for financial stability. If the Commission restricts ACC's ability to obtain new subscribers, it will severely limit the company's resources to support a

nationwide, end-to-end E911 solution. Furthermore, without a growing revenue base, ACC will not be able to invest further into its network to improve the features and functionality of its existing VoIP service offerings. As a result, the public (and ACC's customers) will certainly suffer.

Grant of the instant waiver, moreover, would not undermine the Commission's 911 policy goal - that of public safety. During the waiver period, customers will continue to have access to 911 services.

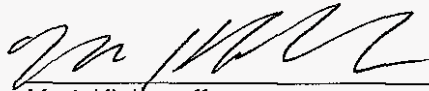
Finally, the Commission has previously allowed the wireless industry to continue to flourish as a competitive industry during the E911 deployment process, and strict adherence to the rules will eliminate that opportunity for the VoIP industry. Thus, a similar balancing of policy objectives in the VoIP case further supports waiver relief.

IV. CONCLUSION

For the reasons set forth above, ACC requests that the Commission expeditiously grant ACC a limited waiver of section 9.5(b) of the Commission's Rules to provide it until October 31, 2006 to complete the deployment of E911 services for its VoIP customers.

Respectfully submitted,

**ACCESSLINE COMMUNICATIONS
CORPORATION**



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January 5, 2006

Exhibit 1 – AccessLine 911 Customer Notification

CRITICAL CUSTOMER NOTIFICATION CONCERNING EMERGENCY SERVICES (911):

As a user of our VoIP based services, you may, on occasion, have reason to dial Emergency Services or '911'. Please be advised as follows:

EMERGENCY SERVICES OR '911' MAY NOT BE ACCESSIBLE FROM YOUR VOIP SERVICE UNDER CERTAIN CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO:

- IF THERE IS A POWER FAILURE OR SOME OTHER TYPE OF FAILURE OF THE VOIP DEVICE OR ASSOCIATED EQUIPMENT INSTALLED AT YOUR PREMISES.
- IF THERE IS A FAILURE OR CONGESTION OF THE DATA CONNECTION (SUCH AS DSL CONNECTION) OR ASSOCIATED EQUIPMENT PROVIDED BY YOUR DATA SERVICE PROVIDER.
- IF THERE IS A FAILURE OR CONGESTION OF THE VOIP NETWORK PROVIDING YOUR VOIP SERVICE, THE PUBLIC SWITCHED TELEPHONE NETWORK (PSTN), THE 911 SERVICE PROVIDER'S NETWORK OR THE EMERGENCY SERVICES NETWORK.
- IF YOU ARE USING A PHONE NUMBER WITH YOUR SERVICE THAT IS NOT LOCAL TO THE PHYSICAL LOCATION OF THE VOIP DEVICE OR IF YOU ARE USING THE SERVICE OUTSIDE OF THE CONTINENTAL USA.
- IF YOU HAVE RECENTLY MOVED THE VOIP DEVICE, DELAYED IN PROVIDING OR FAILED TO PROVIDE ACCURATE LOCATION INFORMATION TO YOUR SERVICE PROVIDER, OR THE INFORMATION YOU HAVE PROVIDED HAS NOT YET BEEN UPDATED BY YOUR SERVICE PROVIDER OR IS INACCURATE.
- IF YOUR SERVICE HAS BEEN DISCONNECTED OR SUSPENDED FOR NON-PAYMENT OR ANY OTHER REASON.

FURTHER, IN SOME CIRCUMSTANCES YOUR 911 SERVICE MAY BE LIMITED TO TRADITIONAL 911 SERVICE RATHER THAN ENHANCED 911 (OR 'E-911'). WITH E-911 YOUR ADDRESS AND CALLBACK INFORMATION IS AUTOMATICALLY PROVIDED TO THE EMERGENCY SERVICES SYSTEMS. IF E-911 SERVICE IS NOT AVAILABLE IN YOUR AREA OR AT THE TIME OF YOUR 911 CALL, THEN, THE SYSTEM MAY DEFAULT TO TRADITIONAL 911 SERVICE AND YOU MAY BE REQUIRED TO VERBALLY INFORM THE 911 CALL TAKER OR EMERGENCY RESPONDER OF YOUR ADDRESS AND PHONE NUMBER.

CALL BACK FROM THE EMERGENCY SERVICES MAY ALSO FAIL UNDER CERTAIN CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO:

- IF YOU ARE USING CALL FORWARDING, CALL REDIRECTION OR BLOCKING SERVICES.
- IF THE EMERGENCY CALLBACK NUMBER IS CONFIGURED TO RING A PHONE AT A DIFFERENT LOCATION THAN YOUR VOIP DEVICE

WE HAVE PROVIDED YOU WARNING LABELS WITH YOUR VOIP SERVICE. YOU ARE REQUIRED TO PROMINENTLY DISPLAY THESE LABELS ON YOUR VOIP DEVICE, ANY PHONE

THAT MAY BE CONNECTED (EITHER DIRECTLY OR INDIRECTLY) TO THE VOIP DEVICE AND AT OTHER PROMINENT LOCATIONS AT ALL CORPORATE LOCATIONS UTILIZING THIS VOIP SERVICE.

FURTHER AT ALL CORPORATE LOCATIONS UTILIZING THIS VOIP SERVICE, YOU ARE HEREBY ADVISED TO TAKE ALL MEANS POSSIBLE TO ENSURE THAT EMPLOYEES, GUESTS AND ANY OTHER PERSONNEL THAT MAY UTILIZE THE VOIP DEVICE/ SERVICES ARE AWARE OF THE LIMITATIONS OF THE EMERGENCY SERVICES IN ACCORDANCE WITH THIS CUSTOMER NOTIFICATION AND ARE MADE AWARE OF ALTERNATIVE METHODS OF ACCESSING 911 SERVICES IN THE EVENT OF A FAILURE OF THE VOIP SERVICE.

Please contact AccessLine regarding any questions on the above notification.

By signing below, you acknowledge that you have received, read and understood this CRITICAL CUSTOMER NOTIFICATION and the information provided herein.

Customer Name: _____

By: _____

Name: _____

Its: _____

Date: _____

WARNING LABEL:

WARNING: 911 service may be limited or not available on your VoIP Service. Voice Service, including 911, will function differently or not at all:

- during an electrical power or broadband provider outage or other failure of the VOIP device or data network connection, including congestion of the data network.
- if you are using a phone number with your service that is not local to the physical location of the VOIP device, if you have moved the VOIP device or if you are using the service outside of the continental USA.